

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

* * * * *

ROCKY EGGART,)	
)	
Petitioner/Appellant,)	
)	OSPI 211-92
VS.)	
)	
TRUSTEES, BIG HORN COUNTY)	<u>DECISION AND ORDER</u>
SCHOOL DISTRICT NO. 2 & 27,)	
)	
Respondent.)	

* * * * *

PROCEDURAL HISTORY AND FACTS OF THIS APPEAL

Rocky Eggart is appealing the June 16, 1992, decision of the Big Horn County Superintendent of Schools, Roberta Snively. Superintendent Snively affirmed the Trustees of Big Horn County School Districts No. 2 and 27 [hereinafter "the Trustees"] March 23, 1992, decision not to renew Mr. Eggart's contract as athletic director.

Mr. Eggart, who had held the position of athletic director for three years, was not employed as a teacher. On March 3, 1992, the Trustees held a special meeting to determine if his athletic director contract should be renewed. At that meeting they chose to give the public the opportunity to comment and they gave Mr. Eggart the opportunity to respond. On March 23, 1992, the Board voted not to renew his contract.

Mr. Eggart requested a written statement of the reasons for not renewing. On April 3, 1992, the Trustees responded. On April 15, 1992, Mr. Eggart appealed the decision to the County

Superintendent, stating that "This appeal is submitted pursuant to ARM 10.6.105; M.C.A. Section 20-3-210 and M.C.A. Section 20-4-206." (Appeal before the Big Horn County Superintendent, p. 2).

On May 20, 1992, a hearing was held on whether the April 3, 1992, letter met the requirements of § 20-4-206, MCA, that "Within 10 days after receipt of the request, the trustees shall furnish to the teacher a true statement of reasons for termination." Mr. Eggart argued that the statements in the April 3, 1992, letter were either untrue, too general or both.

On June 16, 1992, the County Superintendent issued her Findings of Fact and Conclusions of Law that Mr. Eggart did not demonstrate the reasons stated in the April 3, 1992, letter for not renewing his contract were false. Mr. Eggart appealed to this Superintendent "on the grounds and for the reason that Respondents, in responding to the request of the Appellant pursuant to Section 20-4-206(4), MCA, provided reasons which were intentionally vague and drafted to circumvent the rights of the Appellant." (Notice of Appeal before the Superintendent of Public Instruction, p. 2).

STANDARD OF REVIEW

This Superintendent's review *of* a County Superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in Rule 10.6.125, ARM. Findings of fact are reviewed under a clearly erroneous standard and conclusions of law are reviewed under an abuse of discretion standard. Harris v. Trustees, Cascade County School Districts No.

6 and F, 241 Mont. 274, 786 P.2d 1164 (1990). The petitioner bears the burden of showing that he has been prejudiced by a clearly erroneous ruling. Terry v. Board of Resents, 220 Mont. 214, at 217, 714 P.2d 151, at 153 (1986).

The State Superintendent may not substitute her judgment for that of a County Superintendent as to the weight of the evidence on questions of a fact. Findings are upheld if supported by substantial, credible evidence in the record. A finding is clearly erroneous only if a "review of the record leaves the Court with the definite and firm conviction that a mistake has been committed." State Commensation Mutual Insurance Fund v. Lee Rost Logging, 252 Mont. 97, at 102, 827 P.2d 85 (1992).

Conclusions of law are subject to more stringent review. Conclusions of law are reviewed to determine if the agency's interpretation of the law is correct. Steer, Inc. v. Dept. of Revenue, 245 Mont. 470, at 474, 803 P.2d at 603 (1990).

DECISION AND ORDER

The County Superintendent correctly concluded that Mr. Eggart's appeal should be denied. The order is AFFIRMED.

MEMORANDUM OPINION

The Trustees' decision not to renew Mr. Eggart's contract is not governed by § 20-4-206, MCA, because Mr. Eggart was not employed as a teacher. He was the athletic director at Lodge Grass Schools; his duties did not include teaching. (Findings of Fact 2 and 3, June 16, 1992, Findings of Fact and Conclusions of Law).

In Trustees, Wheatland County School District No. 16 v. Lyle (Bud) Colby & Carla Hinand, OSPI 178-89, decided June 5, 1990, 9 Ed.Law 96 (OSPI1990), this Superintendent held that coaches do not achieve tenure for purposes of § 20-4-203, MCA. The same reasoning applies to athletic directors and § 20-4-206, MCA.

The relevant portions of § 20-4-206, MCA, are:

(1) The trustees shall provide written notice by May 1 to all nontenure teachers who have been reelected. . .

(3) When the trustees notify a nontenure teacher of termination, the teacher may within 10 days after receipt of the notice make written request of the trustees for a statement in writing of the reasons for termination of employment. Within 10 days after receipt of the request, the trustees shall furnish to the teacher a true statement of reasons for termination.

(4) If a nontenure teacher believes the reasons provided by the trustees are not true, the teacher may request in writing within 10 days of receipt of the statement of reasons that the county superintendent hold a hearing in accordance with 20-3-210 to determine whether the reasons are true. . . . (Emphasis added).

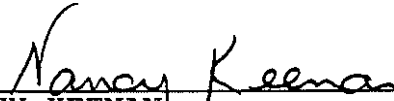
Section 20-4-206, MCA, does not confer any rights on Mr. Eggart. The term "teacher" is defined at § 20-1-101(18), MCA:

. . . any person, except a district superintendent, who holds a valid Montana teacher certificate that has been issued by the superintendent of public instruction under the provisions of this title and the policies adopted by the board of public education and who is employed by a district as a member of its instructional, supervisory, or administrative staff. . . . (Emphasis added).

Given that Mr. Eggart did not meet the definition of teacher, § 20-4-206, MCA, dealing with nontenure teachers, does not confer any statutory rights upon him. Thus, his claim on appeal that the reasons stated by the Trustees for terminating him do not meet the

requirements of § 20-4-206, MCA, has no merit. The order of the Big Horn County Superintendent is affirmed.

DATED this 11 day of August, 1994.



NANCY KEENAN


CERTIFICATE OF SERVICE

THIS S TO CERTIFY that on this 12th day of August, 1994, a true and exact copy of the foregoing Decision and Order was mailed, postage prepaid, to the following:

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Eggart.211